



UNITED STATES PATENT AND TRADEMARK OFFICE

dh
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,526	02/26/2004	C. Allen Chang	3102/2020	6448

35743 7590 05/24/2007
KRAMER LEVIN NAFTALIS & FRANKEL LLP
INTELLECTUAL PROPERTY DEPARTMENT
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER

JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
----------	--------------

1618

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

05/24/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

klpatent@kramerlevin.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/787,526	Applicant(s) CHANG ET AL.	
	Examiner D. L. Jones	Art Unit 1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

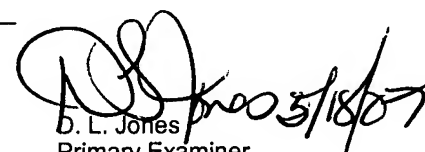
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 11, 12, 15, 16 and 18-20.
Claim(s) rejected: 1, 3, 4, 7-9 and 17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


D. L. Jones
Primary Examiner
Art Unit: 1618

Continuation of 3. NOTE: Applicant's remarks and amendment are noted. However, while the claims have been amended to be distinguishable over the prior art of record. The claim language as written is still ambiguous. For example, while Applicant asserts that the reference to the ligand of the contrast agent defines the structure and properties of L', the wording of claim 1 is awkward and confusing. It is respectfully suggested that Applicant amend the claim as follows in order that one may readily ascertain what is being claimed: 'An excipient for a metal chelate contrast agent, said excipient having the formula $X_m[X'(L')]_n$ wherein X and X' are calcium, m is 1; n is 2, and L' is an organic ligand of the formula (insert the formula of claim 4 and define the variables). It is respectfully suggested that claim 7 be amended as follows: replace the phrase 'are each' with 'is independently'; insert 'or' after 'acid' in line 3; and delete the ',' after 'acid'. Delete claim 8. In claim 9, line 3, replace 'compromising' with 'comprising'. Actually, it is respectfully suggested that claim 9 be amended as follows: 'A contrast agent composition for use in magnetic resonance, x-ray, ultrasound, and radiodiagnostic imaging comprising a complex salt excipient of the formula $X_m[X'(L')]_n$ wherein X and X' are calcium, m is 1, n is 2, and L' is a compound of the formula (insert the compound of claim 4 and define its variables) and a pharmaceutically acceptable carrier. It is respectfully suggested that claim 15 be amended as follows: in line 1, replace 'L and L' with 'L'; in line 1, replace 'are each' with 'is'; and in line 2, replace 'acid,' with 'or'. In addition, the following changes are suggested for the remaining claims. Delete claim 16. Delete claims 18-20, the claims are directed to a metal ion which is not a component present in the excipient formula..



DAMERON L. JONES
PRIMARY EXAMINER